

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-18508
Issue No.: 2002
Case No.: [REDACTED]
Hearing Date: March 25, 2014
County: Macomb-20

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 25, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant) and Rebecca [REDACTED] (Claimant's daughter). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) and the Medicare Savings Program (MSP) due to failure to comply with the verification requirements?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA and MSP on October 22, 2013.
2. On November 6, 2013, the Department mailed Claimant a Verification Checklist (DHS-3503) which indicated, "The Department needs a current pension income verification statement." The pension income verifications were due by November 18, 2013.
3. On November 6, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application for MSP effective October 1, 2013 and denied the MA application effective July 1, 2013. The DHS-1605 also found Claimant had an MA deductible in the amount of \$ [REDACTED] effective October 1, 2013. The MA denial reason provided was, "Not aged, blind, disabled, under 21, pregnant, or a parent/caretaker relative of a dependent child, and individual failed to return documentation to complete a disability determination."

The MSP denial reason was, "Not eligible for Medicare Savings Program. Does not meet basic criteria for Medicare Savings Program." Also, "Individual not eligible for any Medicare cost sharing program because he or she is not enrolled in Medicare Part A." The DHS-1605 also reduced Claimant's monthly FAP to \$ [REDACTED]

4. On December 17, 2013, Claimant requested a hearing concerning MA and MSP. Although the Department reduced her monthly FAP amount, Claimant did not want a hearing about FAP.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

Here, Claimant requested a hearing regarding the MA and MSP programs. Specifically, Claimant disputes the Department's decision to deny her application for these program benefits.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Medicare Savings Programs are SSI-related MA categories and are neither Group 1 nor Group 2 categories. BEM 165. There are three categories that make up the Medicare Savings Programs. BEM 165. The three categories are: (1) Qualified Medicare Beneficiaries. This is also called full-coverage QMB and just QMB. Program group type is QMB. BEM 165. (2) Specified Low-Income Medicare Beneficiaries. BEM 165. This is also called limited-coverage QMB and SLMB. BEM 165. Program group type is SLMB. BEM 165. (3) Q1 Additional Low-Income Medicare Beneficiaries. This is also referred to as ALMB and as just Q1. BEM 165. Program group type is ALMB. BEM 165.

Claimant challenges the Department's decision to deny her MA and MSP applications. The Department contends that Claimant's application for both MSP and MA were denied because she failed to return verifications concerning her pension income. Claimant, on the other hand, states that she properly returned all requested verifications.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. There is no need to address the question whether or not Claimant returned the requested verifications as there are serious problems with the Department's documentation in this case. This Administrative Law Judge is concerned about the fact that the verification checklist and the notice of case action denying the

MA and MSP application were both sent on November 6, 2013. Did the Department decide that Claimant's MA and MSP application were denied at the same time the verification checklist was sent out? It appears as though that is the case based on the record evidence. In the instant matter, the Department failed to include any documentation other than the notice of case action and the verification checklist. The documentation in this record did not provide the Administrative Law Judge with a complete picture of why Claimant's application was denied. Without the additional documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's MA and MSP eligibility. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied Claimant's application for MA and MSP.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Re-register, recertify and reprocess Claimant's October, 2013 application for MA and MSP.
2. To the extent required by policy, provide Claimant with retroactive and/or supplemental benefits

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 26, 2014

Date Mailed: March 26, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/las

cc:

